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October 2, 2018

**VIA ECF & E-MAIL**

The Honorable Richard J. Sullivan  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2104  
New York, NY 10007

**Re: *Actava TV, Inc., et al. v. Joint Stock Company "Channel One Russia Worldwide" et al. (18-cv-06626)***

Dear Judge Sullivan:

We write on behalf of Plaintiffs in the above-captioned action (the "Actava Parties") in response to defendants' counsel's October 2, 2018 letter to this Court requesting an order vacating the clerk's default that issued yesterday (the "Default"). Defendants' response to the Complaint was due on September 26, 2018, but only two defendants appeared or responded by then. Plaintiffs waited until Monday October 1, but still receiving no response, applied for and obtained the Default that day. Mr. Dowd, to whom we first emailed the complaint on July 23, and on whom we served it on September 5, 2018, appeared for all remaining Defendants shortly thereafter.

Four of the six defendants neither appeared nor responded to the complaint until after the Default issued. Those four defendants failed to advance any arguments in Mr. Dowd's September 26, 2018 letter, appear or even request an extension until after the Default issued. Given the ample notice of the summons and complaint, the absence of an email or a telephone call to this firm or a letter to the Court requesting a defined extension of the time for the non-appearing defendants to respond, their default was willful. See, e.g., *Indymac Bank, F.S.B. v. Nat'l Settlement Agency, Inc.*, No. 07 CIV 6865 LTS GWG, 2007 WL 4468652, at \*1 (S.D.N.Y. Dec. 20, 2007). Those defendants' unjustified delay prejudiced Plaintiffs as they had to pursue and obtain a Default in order to advance the case. Plaintiffs therefore object to the Court vacating the Default absent an award to the Actava Parties of reasonable attorneys' fees incurred in obtaining it, to offset their inconvenience and expense in applying for it. A letter simply stating "we expect to be retained by the [non-answering] defendants within the next week" does not comply with the Federal Rules of Civil Procedure.

Sincerely,

A handwritten signature in blue ink, appearing to read "Toby Butterfield", with a long, sweeping horizontal line extending to the right.

Toby Butterfield

cc: Counsel of Record (via ECF)